

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JAN - 5 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Amendment of Part 90 of the Commission's)
 Rules to Facilitate Future Development of)
 SMR Systems in the 800 MHz Frequency Band)

PR Docket No. 93-144
 RM-8117, RM-8030,
 RM-8029

and

Implementation of Section 309(j) of the)
 Communications Act -- Competitive Bidding)
 800 MHz SMR)

PP Docket No. 93-253

To: The Commission

COMMENTS

Pro Tec Mobile Communications, Inc. ("Pro Tec") hereby opposes the proposals
 put forth the above captioned matter and states in support of its opposition the following:

Introduction

Pro Tec is a traditional SMR operator in the Phoenix, Arizona area. Its systems
 are serving the public and the operation of businesses, schools, government agencies, and
 public safety entities. The systems work reliably, delivering a much needed
 telecommunications service to the local community. In fact, Pro Tec has been
 sufficiently successful, that it would enjoy an opportunity to gain additional spectrum to
 increase its service offering to the public. However, that opportunity has been limited.

There is no available spectrum for growth. Spectrum which should be available is presently warehoused by ESMR operators under a "five-year plan" that offers little to the market except promises. Other 800 MHz channels are held hostage by speculators who have filed thousands of applications with the Commission, products of info-mercials,¹ strike applications and bogus get-rich-quick schemes.² Finally, the Commission's ongoing freeze on its acceptance of applications has further created unavailability of additional spectrum.³ One is, therefore, left to wonder how the SMR industry arrived at this strange and stagnating spectrum position.

There are those that point to the Commission's grant of the waiver to Fleet Call, Inc. as the detrimental action taken. The Commission attempted to provide a framework for the creation of seamless SMR networks by single or cooperative carriers. The action might have been laudable, had the Commission also regulated these entities employing the remainder of its rules. For example, if the Commission had decided that the waiver did not extend to the rules which require applicants to only propose the use of spectrum

¹ The Commission should curtail the activities of application mills through enforcement of precedent and rule that require applications to be prepared either by the applicant or its legal counsel.

² Given its history, Nextel Communications, Inc. appears to be first in this category and unfortunately, recent reports suggest that its investors are finding out too late that they may suffer the same fate as the victims of info-mercials.

³ If the freeze was intended to maintain the *status quo* until the conclusion of the instant proceeding, Pro Tec asserts that the tenor of likely rejection of the proposals by the SMR industry should be viewed as a mandate on the continuation of the freeze, providing the Commission the justification and incentive for lifting the freeze and processing the pending applications held by the agency.

which was required to meet identifiable needs. This rule ignored in the ESMR arena, frequency warehousing quickly became the norm.

The Commission might also have required that ESMR operators' footprints not unnecessarily intrude on existing operators by requiring that such systems may not employ the short-spacing rules in associated engineering. Therefore, these behemoths might not have caused such market and operational problems for existing licensees. Finally, the Commission might not have given five-year construction periods with no requirement that some level of accomplishment toward construction and operation of ESMR must be demonstrated at set times within the five-year construction period. Had these steps been taken, an opportunity might have been created that was not so contentious.

But even with all of these advantages, the ESMR systems in the market have not proven a good investment for the Commission. The Commission's largesse has not reaped a new service. The vast amount of ESMR spectrum authorized today is either unused or is employed to provide traditional dispatch services. It's been three years since grant of the Fleet Call, Inc. waiver and still there does not exist a viable, reliable ESMR system in this Country.

With these proposals, the Commission recommends the throwing of good spectrum after bad to improve a faltering service. Taken objectively, these proposals are

merely misguided and should be rejected as impractical. However, Pro Tec, like all traditional SMR operators, cannot be wholly objective. If adopted, the proposals would place Pro Tec at the mercy of large, publicly traded companies which have shown more diligence toward the sale of stocks than the sale of service.

Frequency Migration

The most heinous of the proposals forwarded in this matter is forced frequency swapping. The cost of adoption is far too great to justify, particularly in view of the moribund nature of the ESMR industry. Put forth as comparable to the PCS licensees' change out of microwave systems, this proposal has gained some undeserved momentum. There is an extreme difference between the cost and inconvenience attendant to changing out the frequency of microwave links, operating from known, fixed points; and the cost of reprogramming hundreds of thousands of end-user mobile units. Pro Tec avers that the cost would be in the hundreds of millions of dollars, if such frequency swaps could even be accomplished.

One of the underlying and unproven premises associated with this proposal is that "fully comparable frequencies" exist for this purpose. Pro Tec does not believe that such spectrum exists. Certainly, such spectrum does not exist within the 800 MHz frequency band. Accordingly, Pro Tec must believe that the Commission's proposal includes forcing traditional SMR operators to accept something else, perhaps at the 450 MHz band, to accommodate the vaunted dreams of the "third cellular system" providers. If

this is the Commission's intent, meaningful notice for the purpose of soliciting meaningful comment from the public requires that this intention be fully articulated within the FNRPM.

And if this is the Commission's true proposal, Pro Tec avers that channels in the 450 MHz band are not fully comparable to 800 MHz trunking channels. The Commission's existing rules belie this finding and any speculation regarding the outcome of any future refarming docket cannot serve as a logical or legal basis for making any claim that traditional SMR operators will be justly and fairly compensated for their loss of 800 MHz band channels.

Nor has any ESMR operator shown itself willing or able to bear the cost of forced frequency migration, to any portion of the spectrum. ESMR operators or MTA license grantees would need to be able to show that they are able to pay the cost of reprogramming, new combiners, new intermodulation studies, new end-user equipment when necessary, labor costs, cost of lost billing time, cost of subscriber inconvenience and loss of confidence in existing systems. Bare claims of willingness to bear these costs must be accompanied with demonstrated ability to actually pay these costs for the proposal to be supported by facts and guarantees, rather than hollow promises and supposition.

Pro Tec respectfully requests that the Commission reject this proposal as detrimental, unworkable and patently specious. Its proponents' polyanna approach to the costs associated with this proposal and their unproven ability to compensate the victims of adoption do not provide any basis for adoption.

MTA Licensing

A further disruptive proposal within this proceeding is the suggestion that licensing of ESMR systems now be market-based, rather than facility-based. This proposal is also without merit or justification. First, it is not necessary to produce wide-area operations. Such operations exist and are growing in those areas where adequate demand is present. Therefore, the market and not the Commission is and should be responsible for bringing such service to the public. Since the market, unaided or uninterrupted by further regulatory action, is operating nicely to create this evolution where and when necessary, there is no basis for demanding such operations by legislative fiat.

Since such action is not required, there must exist other justification for this proposal. However, when the Commission explores those justifications or excuses, the Commission will determine that at the core of this proposal is anti-competitive activity, forwarded with the singular intent to benefit only a handful of corporations. MTA-based licensing will enable companies, like Nextel Communications, Inc., to tighten their grip on the SMR industry, squeezing out competition and paying deflated auction prices for

the opportunity. The Commission need consider little more than the obvious in its arrival at this conclusion.

The Commission's proposal would allow grant of authority via auction to entities to obtain some privilege to operate on spectrum blocks across MTAs. Given Nextel's present market position, including the huge number of channels held pursuant to earlier grants of authority, there is more than a scant likelihood that many auctions would have only one bidder, Nextel. Pro Tec respectfully suggests that a single-bidder auction is not in the public interest or the interest of the federal government to improve its bottom line.

Following grant of MTA authority, the "winning bidder" would obtain authority to operate an ESMR across an MTA. That authority can be obtained and has been obtained through application and purchase, without any further regulation and often on larger blocks of frequencies. Accordingly, the Commission would sell at auction what likely bidders already own. This natural consequence flies in the face of any requirement that auctions might be used in any reasonable manner.

For the foregoing reasons, the Commission should reject the proposal to employ either MTA-based licensing or auction procedures. Both are simply unworkable and illogical in the context of the SMR industry for any and all purposes.

The Vitality Of The Marketplace

As shown above, the vitality of the SMR marketplace has not been due to the intervention or machination of any ESMR operator. The vitality of the market and value of the SMR channels arises out of the functional and efficient use of the spectrum by traditional operators serving the tangible and articulated demands of the public. The SMR industry is one area where independent entrepreneurs have thrived and the Commission should promote their efforts. These proposals work to the contrary and for that reason alone, each should be rejected.

When the Commission received auction authority from Congress, a significant portion of that authority was intended to be used in a manner which assured participation in the marketplace by small business. The articulated intent of Congress was to assure that the telecommunications industry did not become the exclusive property of the super-rich. The proposals offered within the FNPRM do not further Congress' stated intentions in creating auction authority. Instead, the broad-band, MTA-wide, auction proposal is an attempt to regulate the SMR industry in a manner which encourages abandonment of the service by small business, to avoid the harm caused to independent operators by rapid and wanton consolidation.

The Commission should, by rejection of the proposals, stop the further erosion of the SMR marketplace as the most viable, successful dispatch provider within the United States. The competitive balance of this industry has already been severely injured due to ESMR spectrum warehousing. The Commission should not exacerbate the harm

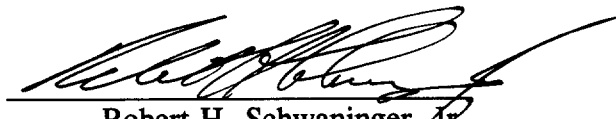
already felt by independent operators by offering additional, unearned advantages to ESMR operators.

Conclusion

For the foregoing reasons, Pro Tec respectfully requests that the Commission reject each of the proposals contained within the FNPRM as wholly detrimental or unnecessary or illogical or unsupported or simply not in the public interest.

Respectfully submitted,
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By


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